

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

February 23, 2006 Session

**PAULA JEANNE GREENE v. PAUL THOMAS GREENE**

**Appeal from the Circuit Court for Davidson County  
No. 03D-1005 Muriel Robinson, Judge**

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**No. M2005-00456-COA-R3-CV - Filed April 25, 2006**

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The trial court granted Wife a divorce based on Husband's adultery and awarded Wife alimony in futuro in the amount of \$1,500.00 per month. Husband appeals the award of permanent alimony as opposed to rehabilitative alimony as well as the amount of monthly alimony, claiming an inability to pay due to other financial obligations, including child support for the parties' four children. The judgment of the trial court is modified with respect to the award of alimony in futuro and the amount of monthly alimony, otherwise, the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed in Part,  
Affirmed in Part**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Chadwick W. Stanfill, Nashville, Tennessee, for the appellant, Paul Thomas Greene.

Gregory D. Smith and Aminah M. Collick, Nashville, Tennessee, for the appellee, Paula Jeanne Greene.

**OPINION**

Ms. Paula Jeanne Greene (Ms. Hennis) and Mr. Paul Thomas Greene (Mr. Greene) were married on January 1, 1990, and there were four children born from the marriage, ranging in age from two (2) to twelve (12) years old. Mr. Greene left the marital home in March, 2003, while Ms. Hennis was pregnant with their youngest child, accepting a position with Best Buy, Inc. and relocating to Atlanta, Georgia. On April 25, 2003, Ms. Hennis filed a complaint for divorce in Davidson County Circuit Court, alleging irreconcilable differences, inappropriate marital conduct, and adultery. On June 5, 2003, Mr. Greene filed an answer and counter-complaint alleging irreconcilable differences and inappropriate marital conduct.

The trial court entered a final decree of divorce on January 27, 2005, granting Ms. Hennis a divorce based on Mr. Greene's admitted adultery. At the time of trial, Mr. Greene held an executive position with Best Buy, Inc. in which he earned a base salary of \$103,265 plus bonuses averaging \$10,000 per year. Mr. Greene's position requires him to work between 65 and 80 hours per week and travel at least 80% of the time, therefore, the trial court awarded custody of the minor children to Ms. Hennis and made an upward deviation from the child support guidelines to \$3,238.00 per month.

Ms. Hennis is a stay at home mother who has not worked outside the home since April, 1996. Although Ms. Hennis attended college for four years, she has yet to earn a degree. Based on these facts, the court was unsure whether Ms. Hennis could be rehabilitated but awarded her alimony in futuro in the amount of \$1,500.00 per month until her death or remarriage. The court further held that Ms. Hennis' permanent alimony was unmodifiable unless she earned a salary greater than \$18,000.00 a year. In addition to alimony, Mr. Greene was required to maintain COBRA insurance for Ms. Hennis at an amount of \$246.00 per month for 36 months and provide hospitalization and medical insurance for the children. The trial court determined that Ms. Hennis would pay for the children's prescription drugs.

With regard to the division of marital debts and assets, the trial court awarded Ms. Hennis the marital home valued at \$150,000.00 subject to a \$140,000.00 mortgage as well as all the household furnishings. Ms. Hennis was also responsible for the balance of a credit card in the amount of \$6,707.00. Mr. Greene was allowed to claim three of the children for income tax purposes, retain all of the stock options from his employment and past due bonuses, and keep the furnishings in his Atlanta apartment. The trial court also determined that Mr. Greene should pay outstanding marital debts in the amount of \$3,191.28, the parties' joint credit card in the amount of \$5,500.00, a doctor's bill in the amount of \$602.00, and Ms. Hennis' attorney's fees in the amount of \$7,500.00. Mr. Greene's 401k was divided equally between the parties. Finally, Mr. Greene was required to name Ms. Hennis as the beneficiary of his employer-provided life insurance policies until the youngest child reached majority, was no longer in Ms. Hennis' custody, or graduated from high school, whichever occurred first.

On appeal, Mr. Greene challenges (1) the trial court's award of alimony in futuro to Ms. Hennis; and, (2) the monthly amount of alimony awarded to Ms. Hennis, or in the alternative, the division of marital assets, assignment of debts, and future expenses.

The review of a case tried without a jury is *de novo* upon the record, accompanied with a presumption of correctness as to the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn.R.App.P. 13(d). The trial court's conclusions of law, however, are not afforded such a presumption. *Helton v. Helton*, 2006 WL 461041, No. M2005-00268-COA-R3-CV, at \*2 (Tenn.Ct.App. Feb. 24, 2006).

Mr. Greene first challenges the trial court's award of alimony in futuro to Ms. Hennis, arguing that Ms. Hennis has the ability to be rehabilitated and therefore should only be entitled to

rehabilitative alimony. In *Carpenter v. Carpenter*, 2005 WL 2240977, No. M2004-00668-COA-R3-CV, at \*6 (Tenn.Ct.App. Sept. 15, 2005), this Court discussed altering wife's alimony award, stating:

[T]he trial court is granted broad discretion to determine whether spousal support is required and if so, the nature, amount, and duration. *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn.2004). As a result, appellate courts are disinclined to alter a trial court's spousal support decision unless an incorrect legal standard was applied or the decision reached is clearly unreasonable. *Bogan v. Bogan*, 60 S.W.3d 721, 733 (Tenn.2001).

There are four classes of support recognized in Tennessee, including alimony in futuro, alimony in solido, rehabilitative alimony, and transitional alimony. Tennessee Code Annotated section 36-5-101(d)(1) reflects a preference towards the award of rehabilitative or transitional alimony as opposed to alimony in futuro. *Bratton v. Bratton*, 136 S.W.3d at 605 (Tenn.2004). Alimony in futuro is generally intended to provide long-term support to an economically disadvantaged spouse who is unable to be rehabilitated. *Burlew v. Burlew*, 40 S.W.3d 465, 471 (Tenn.2001). On the other hand, rehabilitative alimony enables an economically disadvantaged spouse to acquire additional education or training so as to allow them to reach a standard of living comparable to the standard of living enjoyed during the marriage or the post-divorce standard of living expected to be available to the other spouse. Tennessee Code Annotated section 36-5-101(d)(1)(C) (Supp.2004); *Robertson v. Robertson*, 76 S.W.3d at 340-41 (Tenn.2002).

The determination of the type, amount and duration of spousal support is a fact-intensive inquiry, which requires the court to consider the various factors listed in Tennessee Code Annotated section 36-5-101(d)(1)(C). *Robertson v. Robertson*, 76 S.W.3d at 338 (Tenn.2002). The two factors considered most relevant among the list are the economically disadvantaged spouse's need and the obligor spouse's ability to pay. *Robertson v. Robertson*, 76 S.W.3d at 342 (Tenn.2002).

*Carpenter*, 2005 WL 2240977, at \*6.

In this case, Ms. Hennis is clearly an economically disadvantaged spouse in need of support, however, we do not believe, based on the circumstances, that she is incapable of rehabilitation. Ms. Hennis is currently 38 years old and in sound mental and physical condition. Although she does not have a college degree, the record shows that Ms. Hennis attended college for four years in pursuit of a degree, and we must assume, based on the length of time, that she is close to earning that degree.

However, it is presently undesirable for Ms. Hennis to seek employment outside the home or to resume work towards obtaining her degree because of the age of the parties' children and the cost of child care. We therefore reverse the trial court's award of alimony in futuro and instead, award Ms. Hennis rehabilitative alimony for a period of ten (10) years modifiable during such term depending on the circumstances. We believe that such an award furthers the legislative preference

towards rehabilitative alimony where feasible, while providing Ms. Hennis with the support necessary to continue working as a full-time mother until the parties' children are in school full-time and she has had a sufficient amount of time to obtain her degree.

Mr. Greene next contends that the trial court erred in the monthly amount of alimony awarded to Ms. Hennis or in the alternative, the division of marital assets, assignment of debts, and future expenses. According to Mr. Greene's sworn monthly income and expense statement, his net monthly income is \$6,405.00. The trial court ordered that Mr. Greene pay \$3,238.00 a month in child support, \$1,500.00 a month in alimony, and \$246.00 a month for COBRA insurance for Ms. Hennis, which is an obligation totaling \$4,984.00 a month. Mr. Greene's regular monthly expenses, which include rent, insurance, utilities, food, a car payment, gas, a credit card payment, visitation trips, dry cleaning, and other miscellaneous expenses, total \$2,592.00. This leaves Mr. Greene with a deficit of \$1,171.00 a month. However, the trial court's award appears to result in Ms. Hennis operating at a deficit as well.

According to Ms. Hennis' sworn monthly income and expense statement, her monthly expenses total \$5,355 to support herself and the parties' four children. Ms. Hennis' income is limited to the \$3,238.00 she receives from Mr. Greene in child support and the \$1,500.00 she receives from Mr. Greene in alimony. This leaves Ms. Hennis with a deficit of \$617.00 per month.

In virtually every case, the two most important factors in determining the amount of alimony are the demonstrated need of the disadvantaged spouse and the obligor spouse's ability to pay. *Varley v. Varley*, 934 S.W.2d 659, 668 (Tenn.Ct.App.1996); *Crain v. Crain*, 925 S.W.2d 232, 234 (Tenn.Ct.App.1996). This determination is made all the more difficult when the disadvantaged spouse's need is significant due to the financial strain caused by multiple minor children and the obligor spouse, although gainfully employed, does not have the ability to meet all the family's financial obligations.

In *Woods v. Woods*, No. M2002-01736-COA-R3-CV, 2005 WL 1651787, at \*9 (Tenn.Ct.App. July 12, 2005), the court reduced the amount of alimony awarded to wife due to the size of husband's other obligations including child support for the parties' three children. The court found that in light of husband's other expenses, he could not realistically afford to make the court awarded monthly alimony payments. *Woods*, 2005 WL 1651787, at \*9. In making this determination, the court stated:

The difficulty with the trial court's rehabilitative alimony award is its amount. The trial court ordered Mr. Woods to pay Ms. Woods \$1,000 per month. This payment, coupled with Mr. Woods's \$1,325.00 per month child support obligation, consumes almost eighty percent of Mr. Woods's net monthly income and would require Mr. Woods to support himself on approximately \$663.00 per month. This award is simply unrealistic as a practical matter, notwithstanding the fact that fault may be taken into consideration in setting spousal support. Tenn.Code Ann. § 36-5-101(d)(1)(E)(ix) (Supp.2004).

When courts are setting spousal support, they should take into consideration the outstanding obligations of both the recipient spouse and the paying spouse. Tenn.Code Ann. § 36-5-101(d)(1)(E)(i). In the past, this court has reduced the amount of spousal support when, taking into consideration the paying spouse's other financial obligations, it has determined that the paying spouse would have insufficient income to support himself or herself. *See, e.g., Sullivan v. Sullivan*, 107 S.W.3d at 511; *Anderton v. Anderton*, 988 S.W.2d at 683.

We have reviewed this record in light of all of Mr. Woods's financial obligations, the parties' respective earning capacities and the financial resources available to them, along with the age and mental and physical condition of the parties, and we have determined that Mr. Woods should have been required to pay Ms. Woods \$500 per month for three years. Even with this adjustment, Mr. Woods will still be required to support himself on approximately forty percent of his net monthly income.

*Woods*, 2005 WL 1651787, at \*10-11.

Presently, approximately 78% of Mr. Greene's net income is dedicated to the support of the parties' children and Ms. Hennis. We therefore determine that Mr. Greene's alimony payment should be reduced to \$1,000.00 per month, so that 70% of Mr. Greene's net income will be contributed to the support of his family while 30% may be used to support himself.

The division of marital property made by the trial court is a division not equal but equitable. *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn.Ct.App.1988). The parties owned a residence valued at \$150,000 but encumbered by a \$131,038 mortgage. The wife received the equity in the home but was also required to pay the mortgage. The husband actually received the greater percentage in the division of the limited marital property, and this Court affirms that division as being equitable.

As a final matter, Ms. Hennis asserts that Mr. Greene's appeal was frivolous and therefore she is entitled to the fees incurred on appeal. "When it appears to any reviewing court that the appeal from any court of court was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal." Tennessee Code Annotated section 27-1-122. Because we have determined that the trial court erred in the alimony award, Ms. Hennis is not entitled to damages against Appellant.

In this case, Mr. Greene is blessed with substantial income based upon a heavy work schedule. These parties parented four children, all of whom are young and are the beneficiaries of a mutual decision by the parents that Ms. Hennis would be a "hands on" mother, forsaking her own challenges and satisfactions in the workplace to attend to the needs of the children and freeing Mr. Greene to pursue the role as breadwinner. Mr. Greene knew that he had four minor children when

he made the decision to leave the marital home. It is not for this Court to disparage a working father, but the facts of life in this case are plain. The children must be supported, and Ms. Hennis cannot be compelled to forsake her role as caregiver under present conditions. Her rehabilitation and re-entry into the workplace are indelibly entwined with the growth and development of four minor children. Even with Mr. Greene's comfortable income, there is simply not enough money for this now divided family to maintain the standard of living with which they were blessed during the continuation of the marriage.

The judgment of the trial court as relates to alimony is modified to provide rehabilitative alimony to Ms. Hennis in the amount of \$1,000 per month for a period of 10 years subject to future modification within such term dependent upon developing circumstances. In all other respects, the judgment of the trial court is affirmed, and costs are assessed to Appellant.

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WILLIAM B. CAIN, JUDGE